

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Bob Hunter	:	
-vs-	:	
Commonwealth Edison Company	:	
	:	12-0458
	:	
Complaint as to billing/charges	:	
in Sandwich, Illinois	:	

RESPONDENT’S BRIEF ON EXCEPTIONS

The Respondent, Commonwealth Edison Company (“ComEd” or “Respondent”), by and through its attorney, Rebecca A. Graham, comes before the Illinois Commerce Commission and respectfully files this Respondent’s Brief on Exceptions (“Exceptions”) to the Administrative Law Judge’s Proposed Order (“PO”) issued on May 4, 2015.

INTRODUCTION

ComEd respectfully takes exception to portions of the sections of the PO captioned “Complainant’s Position,” “Respondent’s Position,” and to the entire section of the PO captioned “Commission Analysis and Conclusions” as well as the parallel findings and ordering paragraphs 2 and 6-9. The PO mischaracterizes the testimony and evidence presented, ignores relevant testimony and evidence presented, and improperly shifts the burden of proof to Respondent. For these reasons, the Complaint should be denied, and the PO should be rewritten to accurately reflect the evidence of record and to properly place the burden of proof on Complainant.

ARGUMENT

Exception 1. The PO Mischaracterizes Complainant’s Testimony and Evidence and Includes Irrelevant Statements to the Prejudice of ComEd.

The PO’s summary of Complainant’s Testimony and Evidence presented at the evidentiary hearing is inaccurate. First, the PO states that “Mr. Hunter complains that ComEd frequently and

randomly estimates his bills.” (PO at 1). Nowhere in Mr. Hunter’s testimony did he state that ComEd frequently estimates his bills. To the contrary, Mr. Hunter only moved two bills into evidence, one from March 13, 2012 and one from March 15, 2012. He presented no other evidence or testimony about any other estimated bills.

Second, the PO improperly contains irrelevant testimony. Specifically, the PO asserts: “Mr. Hunter states that when he complains to the Company regarding estimated bills, the representatives are rude and disrespectful.” (PO at 1). This statement is unsubstantiated and completely irrelevant to the Complaint.

Third, the PO misstates Complainant’s testimony in subtle ways that make it stronger than it is. For instance, the PO asserts that Complainant “further testified that when he received estimated bills, he would check his meter and the estimate would be overestimated.” (PO at 1-2). That is not what Complainant said in his testimony. Complainant stated: “when I’ve gotten billed for one of my estimates, I’ve gone out and looked at the meter and my meter would be like way overestimated.” (Tr. at 10). It is not clear from this statement what Complainant means by his meter being overestimated, and it is improper for the PO to draw unsupported inferences that make the statement more credible than it is.

Likewise, the PO asserts that Complainant “stated that he has provided readings to representatives, but that these readings are not used to generate a bill.” (PO at 2). This is not what Complainant said, however. Complainant stated that he gave ComEd representatives “my actual meter readings 28 times and they still do not put the actual meter reading on the bill.” (Tr. at 10-11). Nowhere in Complainant’s testimony does he state that his readings “are not used to generate a bill”; he merely states that his actual meter readings are not on the bill. Again, it is improper for the PO to infer a meaning that is not there. Complainant presented no evidence that actual readings were not used to generate his bills.

Moreover, the PO does not reflect that Complainant's testimony is inconsistent. When asked what he did when he received a call from ComEd regarding access issues due to his animals being present, Complainant stated: "I either called in the actual meter reading or I – they've given me a little door hanger slip to fill out the meter reading and hang it back on the door." (Tr. at 39-40). Complainant stated that he could only recall that happening twice, although he provided no corroborating evidence to buttress his statement. Later in his testimony, however, he stated that he only recalled ComEd calling him on the phone twice (Tr. at 42). This is inconsistent with his testimony that he only remembers being generally contacted twice, including through a door hanger. It is improper for the PO to add testimony that is not in the record and to ignore conflicting statements by Complainant.

In sum, the PO improperly mischaracterizes Complainant's testimony and evidence to the prejudice of ComEd. It is improper for the PO to add testimony and inferences that are not supported by the record.

Exception 2. The PO Overlooks Relevant Testimony and Evidence Presented by ComEd.

The PO's summary of Respondent's Testimony and Evidence presented at the evidentiary hearing is incomplete. Specifically, the PO overlooks key evidence presented that shows that the billing on Complainant's account was correct.

First, on cross-examination, ComEd's witness Nelly Dabila stated that it is not possible that the estimated bills were overestimated or wrong. (Tr. at 29). As Ms. Dabila explained, the company rebills based on regular company reads. (Tr. at 29). She used Complainant's Exhibits 1 and 2 as examples and showed that the rebilling that occurred on those bills "worked to [Complainant's] benefit because the bill came out lower." (Tr. at 30). She explained that ComEd got a regular meter reading on December 22 of 48803 and a regular reading of 50291 on February 25, 2012, which were the basis of the rebilling on Complainant's account for the billing periods reflected on the bills introduced into evidence by Complainant. (Tr. at 30-31). Ms. Dabila testified

that estimated reads are based on historical usage. (Tr. at 31). This testimony is all relevant to the issues in the Complaint, and it directly contradicts Complainant's unsupported statement that "ComEd is randomly estimating bills for no rhyme or reason." (Tr. at 9).

Second, the PO overlooks other statements made by Ms. Dabila in response to the ALJ's questions. She stated that ComEd has letters that go out when there are a series of forced estimates taking place on an account. (Tr. at 35). She also testified that "if a customer is calling in, we also encourage them to read their own meter if we have not been able to get access to the meter, for whatever reason." (Tr. at 35). Ms. Dabila stated that if the "meter readers feel like they cannot get to the backyard or to the outside meter where the meter is located, then they will not read the meter for that month, they'll try to get it on the next reading." (Tr. at 36). She testified that the meter readers note the reasons they cannot access a property. (Tr. at 37). Ms. Dabila further testified that Complainant's account has instructions or remarks that the meter reader has access to when reading Complainant's meter. (Tr. at 19). Those instructions are: "three dogs, one Dob, one pit bull, call the day before, put dogs in, and it has Bob, the phone number of 630-688-5864. Leave message, do not enter yard, very bad pit, chronic." (Tr. at 19, ComEd Exhibit 3).

Ms. Dabila stated that ComEd will send "consecutive estimate letters," which "encourages the customer to either call in a reading or set up an appointment with us to send the tech out on the day they're available." (Tr. at 41). She stated that the meter reader may also leave a door card for the customers to take their own reading. (Tr. at 41). All of these statements by Ms. Dabila relate to the business practices of ComEd when there are access issues to a property.

Exception 3. The PO Improperly Shifts the Burden of Proof to ComEd.

The PO misstates the law and improperly shifts the burden of proof to ComEd. It is well-settled that Complainant has the burden of proving the allegations in his complaint by a

preponderance of the evidence. *Scott v. Dept. of Commerce and Community Affairs*, 84 Ill. 2d 42, 53 (1981); 5 ILCS 100/10-15. Therefore, here, Complainant has the burden of proving by a preponderance of the evidence all of the allegations of the Complaint. Complainant has failed to meet his burden, and therefore, the Complaint should be denied.

The Complaint alleges that ComEd committed fraud by consecutively estimating his bills. (Complaint at 1). The Complaint further alleges that ComEd “only took two meter readings all year and guessed on the rest of the months.” (Complaint at 2). Complainant’s requested relief is to remove \$1,500 from the account. (Complaint at 2). Complainant did not prove these allegations by a preponderance of the evidence, and he did not show how any conduct on the part of ComEd entitles him to a \$1,500 adjustment on his account. He presented no evidence whatsoever that ComEd committed fraud by consecutively estimating his bills. Likewise, he presented no evidence that ComEd guessed what his usage was when it estimated his bills, and he presented no evidence that ComEd ever gave him a bill for \$1,500. To the contrary, Complainant’s testimony was unsubstantiated at best and otherwise directly contradicted by ComEd’s evidence.

The PO misstates which party has the burden of proof when it asserts: “It is clear that access to the meter was difficult, but it nevertheless falls on ComEd to show that it attempted to read Mr. Hunter’s meter.” (PO at 3). This is not legally correct. The burden is on Complainant to prove the allegations in his Complaint.

Since the PO is correct that the Commission does not have the authority to hear claims of fraud, Complainant’s first allegation fails as a matter of law. Thus, Complainant’s only remaining allegation is that ComEd “only took two meter readings all year and guessed on the rest of the months.” Complainant presented no evidence that ComEd guessed what his usage was. His only evidence related to this allegation was his testimony about two bills he received in March of 2012. That testimony is inconsistent and otherwise contradicted by the evidence presented by ComEd. Complainant testified

as follows:

I can show that the meter reading of April 4th of 2012 was taken and the usage states that it was 799 kilowatt hours and two days later April 6th, 2012, they said the actual usage was 6-9-7, which I don't understand how to April 4th to April 6th it dropped almost 500 kilowatt hours. (Tr. at 10).

This testimony reveals Complainant's (admitted) misunderstanding about ComEd's billing and was contradicted by his own Exhibits and ComEd's evidence.

Complainant's testimony reveals that he did not recognize that the two bills he entered into evidence as Complainant Exhibits 1 and 2 are for usage during two different months, not two days. Complainant's Exhibit 1 is a bill for usage from 12/22/2011 to 1/25/2012 and Complainant's Exhibit 2 is a bill for usage from 1/25/2012 to 2/24/2012. Complainant's statement that the usage dropped 500 kilowatt hours in two days is not supported by his own evidence (nor is it supported by the numbers; $799-697 = 102$). As ComEd's witness explained, these bills are for two months of service (not two days, as asserted by Complainant) and are based on an actual reading. (Tr. at 29-30). Complainant presented no other evidence that ComEd guessed at his usage.

By contrast, ComEd produced ample evidence – including business records – that shows that the billing was correct and based on historical usage and actual readings. There is absolutely no reliable evidence in the record to suggest that the estimated bills were based on guesses. Accordingly, Complainant has failed to meet his burden of proof, and therefore, the Complaint should be denied.

Exception 4. The PO Misinterprets Part 280.80(b).

The PO focuses on Part 280.80(b)(1) without considering Part 280.80(b)(2), (3), and (4). Part 280.80(b) states that the “utility may render an estimated bill for any billing period in which” any one of four conditions exists. 83 Ill. Admin. Code §280.80(b) (old Part effective February 10, 2004). The PO asserts:

ComEd did not attempt to make a showing regarding any attempts on its part to read Mr. Hunter's meter. ComEd's sole witness is a senior supervisor in its billing department. She was able testify as to what the Company's general practice is regarding

repeated estimated bills, but no records of the Company's attempts to read Mr. Hunter's meter were provided and no witness from the meter reading department was called to testify. ComEd has not shown that it "has taken appropriate and reasonable measures to read the meter." Part 280.80(b)(1). Thus, the Commission can only conclude that ComEd did not take appropriate and reasonable measures to read Mr. Hunter's meter and that ComEd has not complied with the Commission's rules. (PO at 3-4).

This is not what Part 280.80(b) requires, however. Pursuant to Part 280.80(b), ComEd may take estimated reads when it "has taken appropriate and reasonable measures to read the meter" Part 280.80(b)(1), **OR** when the "customer has knowingly and willfully denied reasonable access" Part 280.80(b)(2), **OR** when the "customer has otherwise made an actual reading of the meter unreasonably difficult" Part 280.80(b)(3), **OR** when "circumstances beyond the control of the utility make an actual reading of the meter extremely difficult." Part 280.80(b)(4).

Here, there is ample evidence in the record to show that at least one of these conditions were met. ComEd presented business records showing instructions to the meter readers not to enter Complainant's yard because of three dogs, including a "very bad pit." (Tr. at 19, ComEd Exhibit 3). ComEd presented evidence that it is its business practice to send "consecutive estimate letters" or leave a door card for customers when there are access issues preventing regular meter readings. (Tr. at 41). Complainant's own testimony shows that he knew that ComEd had access issues because of his dogs (Tr. at 39). Complainant's own testimony also reveals that he was aware that he could call in with an actual meter reading. (Tr. at 39). Further, Complainant's own testimony demonstrates that he received at least one door hanger. (Tr. at 39-40). All of this evidence together shows that Complainant's dogs made "an actual meter reading of the meter unreasonably difficult" Part 280.80(b)(3) and that these were circumstances "beyond the control of the utility" Part 280.80(b)(4). In addition, contrary to the assertion in the PO, this evidence shows that ComEd did, in fact, take appropriate and reasonable measures to read Complainant's meter (i.e., ComEd made at least two phone calls and at least one door hanger for Complainant) in accordance with Part 280.80(b)(1).

In any event, the burden of proof was on Complainant to prove the allegations in his Complaint, and therefore, he had to prove by a preponderance of the evidence that ComEd “only took two meter readings all year and guessed on the rest of the months.” (Complaint at 2). There is absolutely no credible evidence in the record to show that ComEd “guessed” his usage. To the contrary, all of the evidence shows that ComEd properly estimated his bills based on historical usage when it could not gain access to his meter and then properly rebilled him based on actual readings when it was able to get a reading.

Exception 5. Even Assuming, *arguendo*, that Complainant Proved his Case, the Relief Ordered has no Connection to the Relief Requested in the Complaint or to the Evidence in the Record.

Having improperly found that ComEd did not prove that it complied with Part 280.80, the PO then orders ComEd to adjust Complainant’s bill using the time period of September 22, 2011 to August 22, 2012 as the basis for the rebill. (PO at 4). This resolution of the Complaint has no connection to the relief requested in the Complaint or to the evidence in the record.

The Complaint requests that ComEd remove a charge of \$1,500 from his account. (Complaint at 2). Complainant presented no evidence whatsoever that ComEd improperly charged him \$1,500. There is nothing in the record to support a finding that Complainant is entitled to a \$1,500 adjustment on his account, and in fact, there is nothing in the record that shows that Complainant was ever given a bill for \$1,500.

The evidence in the record shows that Complainant was charged \$1,356.52 for a rebill on October 3, 2011. (Tr. at 26). This rebill was based on two regular readings taken on May 24, 2010 and September 22, 2011. (Tr. at 24-26). This means that the rebilling reflects actual usage by Complainant. In other words, the average 64 kilowatt hours per day that was used for the rebilling is not arbitrary. It is the amount of kilowatt hours actually used by Complainant. The evidence also shows that sometimes a rebilling will result in a credit to an account, including Complainant’s.

(Tr. at 30). This reinforces the fact that a rebilling is based on actual usage, not some arbitrary number. Consequently, the uncontroverted evidence shows that Complainant was charged for exactly the amount of electricity he consumed. No other conclusion can be reached from the evidence other than that the rebill was based on actual usage and Complainant has no damages.

Rather than accepting this evidence, the PO arbitrarily chooses another time period with which to base Complainant's usage from November 18, 2010 to September 22, 2011. The PO arbitrarily chooses the time period of September 22, 2011 to August 22, 2012 to serve as the basis for rebilling the account for 38.1 kWh per day rather than 64 kWh in the day. There is nothing in the record to support using a different time period to calculate Complainant's usage when his actual usage is available in the record. The evidence is clear that Complainant actually used an average of 64kWh of electricity per day from November 18, 2010 to September 22, 2011.

The PO does not and cannot cite to any authority that allows the Commission to ignore evidence in the record to fashion relief that has no connection to either the allegations in the Complaint or to the relief requested in the Complaint.

CONCLUSION

The Complainant has the burden of proving the allegations in his Complaint by a preponderance of the evidence. He has failed to meet that burden. Accordingly, ComEd respectfully requests that the Commission deny the Complaint.

Respectfully submitted,
Commonwealth Edison Company

By: /s/ Rebecca A. Graham

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CERTIFICATE OF SERVICE

I, Rebecca A. Graham, an attorney, certify that a copy of the foregoing RESPONDENT'S BRIEF ON EXCEPTIONS was served on the following parties by U.S. Mail and/or electronic transmission on May 29, 2015.

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